

C. K. asks the Utah Labor Commission to review Administrative Law Judge George's decision regarding Mr. K.'s claim for benefits under the Utah Workers' Compensation Act ("the Act"; Title 34A, Chapter 2, Utah Code Ann.).

The Labor Commission exercises jurisdiction over this motion for review pursuant to Utah Code Ann. §63-46b-12 and Utah Code Ann. §34A-2-801(3).

BACKGROUND AND ISSUES PRESENTED

On April 6, 1994, while working for Carlson Distributing Co., Mr. K. fell and struck his head. In subsequent adjudicative proceedings at the Labor Commission,¹ Mr. K. was found to have suffered a 15% permanent whole person impairment (5% psychiatric and 10% neurological) as a result of the work accident. Carlson Distributing Co. and its workers' compensation insurance company, Workers Compensation Fund (referred to jointly as "Carlson" hereafter) were ordered to compensate Mr. K. for his 15% impairment.

On June 27, 2000, Mr. K. filed a second claim against Carlson, again related to his work accident of April 6, 1994. In this second claim, Mr. K. alleged that his work-related psychiatric and neurological injuries had worsened and that he was now entitled to additional disability compensation.

Judge George referred the medical aspects of Mr. K.'s claim to a panel of medical experts. The panel concluded that Mr. K.'s neurological impairment had worsened from 10% to 20%, but his psychiatric impairment had improved from 5% to 0%. The panel therefore concluded that Mr. K. now had a permanent whole person impairment of 20%. This amounted to a 5% increase in Mr. K.'s whole person impairment beyond what had already been determined in the earlier adjudicative proceeding.

Judge George accepted the medical panel's opinion and awarded permanent partial disability compensation for the additional 5% whole person impairment. More specifically, Judge George deducted the 5% reduction in Mr. K.'s psychiatric impairment from the 10% increase in his neurological impairment, resulting in a net increase in Mr. K.'s permanent partial disability of 5%.

In requesting Commission review of Judge George's decision, Mr. K. argues Judge George should not have taken into consideration the reduction in Mr. K.'s psychiatric impairment when computing the total amount of his current whole person impairment.

FINDINGS OF FACT

The Commission adopts Judge George's findings of fact. In particular, the Commission agrees with Judge George that the medical panel's report is the most persuasive evidence of the extent of Mr. K.'s impairments. Based on the medical panel's findings, the Commission finds that Mr. K.'s current work-related impairment consists only of a 20% neurological impairment and no

psychiatric impairment.

DISCUSSION AND CONCLUSION OF LAW

As noted above, Mr. K. has already received permanent partial disability compensation for a 15% whole person impairment. Mr. K. now seeks additional compensation on the grounds his permanent partial disability has worsened. In adjudicating Mr. K.'s new claim, Judge George has determined that Mr. K.'s impairment has, in fact, worsened. Specifically, his neurological injury is more severe, while his psychiatric injury has improved. Judge George took both these changes into account in concluding that Mr. K. was entitled to compensation for an additional 5% whole person impairment.

The thrust of Mr. K.'s argument appears to be that the Commission can only consider changes that make an injured worker's condition worse, but not those changes that make the worker's condition better. Mr. K. cites no authority, nor is the Commission aware of any support for Mr. K.'s argument. The Commission therefore concludes Judge George correctly took into account improvement to Mr. K.'s psychiatric condition and worsening of his neurological condition.

The Commission also notes Mr. K.'s arguments that Dr. Miska, the medial panel's neurological consultant, found that Mr. K. suffered from a 19% psychiatric impairment. This is a misreading of Dr. Miska's opinion. In fact, Dr. Miska did not express an opinion on the extent of Mr. K.'s psychiatric injury.

ORDER

The Commission affirms Judge George's decision and denies Mr. K.'s motion for review. It is so ordered.

Dated this 21st day of July, 2005 .

R. Lee Ellertson, Commissioner

1. Records of this first proceeding are referenced as Case Number 96-0321.